

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA
San Francisco

In the Matter of

**FIRST MERCURY INSURANCE
COMPANY,**

**COVERX CORPORATION,
DBA COVERX INSURANCE
SERVICES,**

and,

**FIRST MERCURY EMERALD
INSURANCE SERVICES, INC.,**

Respondents.

FINAL ORDER TO
CEASE AND DESIST

INSURANCE CODE
SECTION 12921.8

File No. 08OC07663-AP
File No. 08OC04603-AP
File No. 09OC00884-AP

TO: FIRST MERCURY INSURANCE COMPANY, 26600 TELEGRAPH ROAD,
SOUTHFIELD, MICHIGAN, 48033, its officers, directors, employees, trustees, agents,
affiliates and service representatives; and,

COVERX CORPORATION DBA COVERX INSURANCE SERVICES, 777 SOUTH
FIGUEROA STREET, #395, LOS ANGELES, CALIFORNIA, 90017, its officers, directors,
employees, trustees, agents, affiliates and service representatives; and,

FIRST MERCURY EMERALD INSURANCE SERVICES, INC., 777 SOUTH
FIGUEROA STREET, #395, LOS ANGELES, CALIFORNIA, 90017, its officers, directors,
employees, trustees, agents, affiliates and service representatives.

WHEREAS, FIRST MERCURY INSURANCE COMPANY is a nonadmitted insurer
that has been placed on the list of eligible surplus line insurers by the Commissioner pursuant to
Insurance Code section 1765.1; and,

WHEREAS, COVERX CORPORATION DBA COVERX INSURANCE SERVICES,
currently holds a license issued by the Insurance Commissioner of the State of California to act

1 as a Fire and Casualty Broker-Agent (License No. 0573926); and,

2 WHEREAS, FIRST MERCURY EMERALD INSURANCE SERVICES, INC. currently
3 holds a license issued by the Insurance Commissioner of the State of California to act as a Fire
4 and Casualty Broker-Agent (License No. 0G00727); and,

5 WHEREAS, California Insurance Code section 12921.8(a)(1) authorizes the Insurance
6 Commissioner to issue a cease and desist order against any person who has acted in a capacity
7 for which a license, registration, or certificate of authority from the Insurance Commissioner
8 was required but not possessed; and,

9 WHEREAS, California Insurance Code section 12921.8(a)(2) authorizes the Insurance
10 Commissioner to issue a cease and desist order against any person who aided or abetted a person
11 who has acted in a capacity for which a license, registration, or certificate of authority from the
12 Insurance Commissioner was required but not possessed; and,

13 WHEREAS, California Insurance Code section 12921.8(c) authorizes the Insurance
14 Commissioner to issue said cease and desist order without holding a hearing prior to issuance of
15 the order; and,

16 WHEREAS, the Insurance Commissioner has alleged that FIRST MERCURY
17 INSURANCE COMPANY, a nonadmitted insurer, through COVERX CORPORATION DBA
18 COVERX INSURANCE SERVICES, acting as its managing general agent, established a
19 physical presence in California and has transacted the business of insurance in the state,
20 including but not limited to underwriting, and has placed insurance with residents of the State of
21 California, without holding the requisite certificate of authority, in violation of California
22 Insurance Code section 700; and,

23 WHEREAS, the Insurance Commissioner has alleged that FIRST MERCURY
24 INSURANCE COMPANY, a nonadmitted insurer, through FIRST MERCURY EMERALD
25 INSURANCE SERVICES, INC., acting as its agent, established a physical presence in
26 California and has transacted the business of insurance in the state, including but not limited to
27 underwriting, and has placed insurance with residents of the State of California, without holding
28 the requisite certificate of authority, in violation of California Insurance Code section 700; and,

1 WHEREAS, a General Agency Agreement by and between FIRST MERCURY
2 INSURANCE COMPANY and COVERX CORPORATION, was entered into on or about
3 December 16, 1997 and amended from time to time, provides in part that CoverX will: (1)
4 Appoint such agents or representatives of the Company and make such agreements with them as
5 the Agent deems desirable for the furtherance of this Agreement; (2) Supervise, direct and
6 implement the production, underwriting, premium collection, accounting and other work
7 necessary or incidental to the insurance business written under this Agreement; (3) Establish and
8 maintain such books and records in the manner and as required by the Company to record the
9 transactions pursuant to this Agreement; (4) Furnish, render and provide all services and
10 facilities for the business it transacts, as are customarily furnished, rendered and provided for
11 insurance companies for the business written hereunder; and, (5) Cancel policies, contracts or
12 certificates for cause; and,

13 WHEREAS, a Producer Agreement by and between COVERX CORPORATION and
14 FIRST MERCURY EMERALD INSURANCE SERVICES, INC. was entered into about
15 December 2008, wherein "CoverX has full and complete authority to enter into the agreement
16 on its own behalf and on behalf of First Mercury Insurance Company," provides in part that First
17 Mercury Emerald Insurance Services, Inc. will: (1) Appoint agents or representatives and make
18 such agreements with them as the Agent deems desirable for the furtherance of this Agreement;
19 (2) Supervise, direct and implement the production, underwriting, premium collection,
20 accounting and other work necessary or incidental to the insurance business written under this
21 Agreement; (3) Establish and maintain such books and records in the manner and as required by
22 CoverX to record the transactions pursuant to this Agreement; (4) Furnish, render and provide
23 all services and facilities for the business it transacts, as are customarily furnished, rendered and
24 provided for insurance companies for the business written hereunder; and, (5) Cancel policies,
25 contracts or certificates for cause; and,

26 WHEREAS, the Insurance Commissioner has alleged that COVERX CORPORATION,
27 in California, through the above-referenced agreements, has aided and abetted First MERCURY
28 INSURANCE COMPANY to transact the business of insurance in California, with residents of

1 the State of California, in violation of California Insurance Code section 703; and,

2 WHEREAS, the Insurance Commissioner has alleged that FIRST MERCURY
3 EMERALD INSURANCE SERVICES, INC., in California, through the Producer Agreement
4 with CoverX, has aided and abetted FIRST MERCURY INSURANCE COMPANY to transact
5 the business of insurance in California, with residents of the State of California, in violation of
6 California Insurance Code section 703; and,

7 WHEREAS, the Insurance Commissioner has alleged that COVERX CORPORATION
8 has been engaged in the unlawful activity set forth herein most recently from about 2006 to the
9 date of issuance of an Order to Cease and Desist dated August 27, 2009 and followed by an
10 updated Order to Cease and Desist dated October 13, 2009; and,

11 WHEREAS, the Insurance Commissioner has alleged that FIRST MERCURY
12 EMERALD INSURANCE SERVICES, INC. has been engaged in the unlawful activity set forth
13 herein most recently from about 2008 to the date of issuance of an Order to Cease and Desist
14 dated October 13, 2009; and,

15 WHEREAS, FIRST MERCURY INSURANCE COMPANY is not now or has ever been
16 licensed by the Insurance Commissioner to transact an insurance business as an insurer in this
17 State, and has been engaged in the activity set forth herein most recently from about 2006 to a
18 date as yet undetermined; and,

19 WHEREAS, FIRST MERCURY INSURANCE COMPANY, COVERX
20 CORPORATION and FIRST MERCURY EMERALD INSURANCE SERVICES, INC. neither
21 admit nor deny any of the allegations or legal conclusions recited in this Final Order to Cease
22 and Desist; and,

23 WHEREAS, pursuant to the terms of a Stipulation and Waiver filed in this matter, the Fire
24 and Casualty Broker-Agent licenses of COVERX CORPORATION and FIRST MERCURY
25 EMERALD INSURANCE SERVICES, INC. will be surrendered and cancelled, and a Restricted Fire
26 and Casualty Broker-Agent license will be issued to COVERX CORPORATION upon stated
27 conditions; and,

28

1 WHEREAS, pursuant to the terms of a Stipulation and Waiver filed in this matter, COVERX
2 CORPORATION will be issued a Restricted Surplus Line Broker license issued upon stated
3 conditions; and,

4 WHEREAS, pursuant to the terms of a Stipulation and Waiver filed in this matter, FIRST
5 MERCURY INSURANCE COMPANY, COVERX CORPORATION and FIRST MERCURY
6 EMERALD INSURANCE SERVICES, INC. will cancel, amend or replace the agency agreements
7 that are the subject of this matter within 45 days of the execution of the ORDER OF INSURANCE
8 COMMISSIONER UPON SETTLEMENT so that all agreements between the parties apply
9 specifically to the California business of the California licensees, and conform to California law; and,

10 WHEREAS, the Insurance Commissioner has determined that the "California Wholesale
11 Surplus Lines Broker and Limited Binding Authority Agreement" ("Wholesale Broker
12 Agreement") attached as Exhibit A to the Stipulation and Waiver, as written, conforms to
13 California law.

14 WHEREAS, with regard to this Final Order to Cease and Desist, Respondents FIRST
15 MERCURY INSURANCE COMPANY, COVERX CORPORATION, and FIRST MERCURY
16 EMERALD INSURANCE SERVICES, INC. hereby waive notice of hearing, hearing and review
17 pursuant to the provisions of Insurance Code section 12921.8, and all other rights which may be
18 accorded pursuant to Chapters 4.5 and 5, Part 1, Division 3, Title 2, Sections 11400-11528 of the
19 California Government Code, and by the California Insurance Code.

20
21 NOW THEREFORE, FIRST MERCURY INSURANCE COMPANY IS HEREBY
22 ORDERED to CEASE AND DESIST transacting the business of insurance in this State,
23 including but not limited to underwriting, with the residents of this State, except as to receiving
24 the lawful placement of surplus line insurance through surplus line brokers licensed here.

25 NOW THEREFORE, COVERX CORPORATION IS HEREBY ORDERED to CEASE
26 AND DESIST transacting the business of insurance in this State except for that which it is
27 licensed. COVERX CORPORATION may not act as a managing general agent or agent, or
28 perform underwriting in this State for affiliate and nonadmitted insurer FIRST MERCURY

1 INSURANCE COMPANY. COVERX CORPORATION may write business as a Surplus Line
2 Broker but shall comply with every condition and restriction placed upon its Surplus Line
3 Broker license.

4 NOW THEREFORE, FIRST EMERALD INSURANCE SERVICES, INC. IS HEREBY
5 ORDERED to CEASE AND DESIST transacting the business of insurance in this State. FIRST
6 EMERALD INSURANCE SERVICES, INC. may not act through COVERX CORPORATION
7 or on its own as a managing general agent or agent, or perform underwriting in this State for
8 affiliate and nonadmitted insurer FIRST MERCURY INSURANCE COMPANY.

9
10 FIRST MERCURY INSURANCE COMPANY shall pay a monetary penalty in the
11 amount of three hundred thirty thousand dollars (\$330,000) pursuant to Insurance Code section
12 12921.8(a)(3). Payment of the monetary penalty shall be made within 30 days of the issuance of
13 an invoice by the Department to FIRST MERCURY INSURANCE COMPANY, and payment
14 shall be mailed to the California Department of Insurance, Division of Accounting, 300 Capital
15 Mall, 13th Floor, Sacramento, CA 95814.

16 COVERX CORPORATION shall pay a monetary penalty in the amount of three hundred
17 thirty thousand dollars (\$330,000) pursuant to Insurance Code section 1748. Payment of the
18 monetary penalty shall be made within 30 days of the issuance of an invoice by the Department
19 to COVERX CORPORATION, and payment shall be mailed to the California Department of
20 Insurance, Division of Accounting, 300 Capital Mall, 13th Floor, Sacramento, CA 95814.

21 FIRST MERCURY INSURANCE COMPANY, COVERX CORPORATION, and FIRST
22 MERCURY EMERALD INSURANCE SERVICES, INC. shall comply with every term,
23 prohibition and requirement of this Order.

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1 Section 12921(b)(1) of the Insurance Code requires the Insurance Commissioner to approve
2 the settlement of this matter. This Order constitutes the approval of the Insurance Commissioner of
3 the settlement of this matter upon the terms and conditions set forth herein and in the Stipulation and
4 Waiver in this matter.

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6 IN WITNESS WHEREOF, I have set my hand and affixed my official seal this

7 23rd day of January, 2012.
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9 DAVE JONES
10 Insurance Commissioner

11 By:

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13 TERESA R. CAMPBELL
14 Assistant Chief Counsel
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